



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505
202-804-7000

April 11, 2018

Mr. Eric Koglin

Personal Matters / Ex. 6

Via email at: **Personal Matters / Ex. 6**

Re: **OSC File No. MA-18-2535**

Dear Mr. Koglin:

This letter is in response to the complaint you filed with the U.S. Office of Special Counsel (OSC) against the U.S. Environmental Protection Agency (EPA or agency). OSC has carefully reviewed the information you submitted to our office. Based on our evaluation of the facts and the law, we have made a preliminary determination to close our file in this matter.

In your complaint, you stated that you work in EPA's Office of Research and Development (ORD) in Las Vegas, Nevada. A year ago, the agency officials announced that all EPA operations in Las Vegas would cease within the next five to ten years. However, on February 6, 2018, agency officials announced that EPA's Office of Administration and Resources Management decided that the EPA ORD operations in Las Vegas would cease on September 30, 2018. On March 1, 2018, you received notice of a management directed reassignment.

You stated that the agency repeatedly references "business care" as the rationalization for accelerating the elimination of ORD operations in Las Vegas, but the only clearly stated reason has been to save money by ending lease payments. You asserted that there will be no immediate cost savings because the leases are not set to end until the end of Fiscal Year 2020, and you questioned the cost effectiveness of relocating all the staff members. You also asserted that the agency is misusing the 2013 Freeze the Footprint Policy.

OSC is authorized to investigate allegations of prohibited personnel practices and certain activities prohibited by civil service law, rule, or regulation. The provisions of 5 U.S.C. § 2302(b) specifically define fourteen prohibited personnel practices for which we have jurisdiction to investigate. 5 U.S.C. §§ 1214(a)(1)(A), 1216(a), and 2302(b). Please note, however, that allegations of prohibited personnel practices are not automatically investigated by our Investigation and Prosecution Division (IPD). OSC's Complaints Examining Unit (CEU) serves as the in-take unit for all prohibited practice complaints submitted to OSC. CEU is responsible for reviewing complaints and making recommendations as to whether further investigation by IPD is warranted.

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When reviewing a complaint, CEU analysts consider whether the information provided for each allegation is sufficient to suggest a prohibited personnel practice, or any other violation under our jurisdiction, occurred. Our decision depends on whether the facts of the case appear likely to satisfy all the elements of the alleged prohibited personnel practice. The elements are found in 5 U.S.C. § 2302(b) and/or case law established by the Courts or the Merit Systems Protection Board (MSPB), which is OSC's deciding authority.

OSC examined your complaint under 5 U.S.C. § 2302(b)(12). Under section 2302(b)(12), it is a prohibited personnel practice to take or fail to take any other personnel action if taking or failing to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles defined in 5 U.S.C. § 2301. The elements of proof of a section 2302(b)(12) violation are: (1) proof of a personnel action as defined in section 2302(a); and (2) proof of a violation of law, rule, or regulation implementing, or directly concerning, one of the merit system principles set out in section 2301. *Pollard v. Office of Personnel Management*, 52 M.S.P.R. 566, 569-70 (1992).

Unfortunately, based on our careful review of the information you provided, we are unable to further pursue your allegations. Generally, management may reassign an employee for nearly any reason. According to the Office of Personnel Management (OPM), the reassignment regulations give an agency extensive flexibility in reassigning an employee to a different position.¹ Reassignments of competitive service employees are covered under 5 C.F.R. § 335.102. OPM further states that an agency may reassign an employee when: (1) the agency has a legitimate organizational reason for the reassignment; and (2) the vacant position is at the same grade or rate of pay as the employee's present position.² Your reassignment is due to the agency's decision to close its facilities in Las Vegas. Although you question the cost effectiveness of the agency's decision and disagree with your reassignment, the information is insufficient to show that your reassignment is not based on bona fide management considerations or is being taken in violation of any law, rule, or regulation.

While we sympathize with your circumstances and understand your frustration with the agency's decision to reassign you, we cannot conclude that your allegations constitute a violation under section 2302(b)(12) or any other prohibited personnel practice. Accordingly, we have no authority to take any further action into your complaint.

As previously stated, we have made a preliminary determination to close your case. However, before we actually close the file, you have the opportunity to provide comments in response to this letter. Your comments must be in writing and should address the reasons given in this letter. You have **thirteen (13)** days from the date of this letter to submit your comments to my attention. Please reference your OSC File Number in your response. You may mail your comments to the return address on the first page of this letter, fax them to 202-653-0015, or

¹ See OPM's Summary of Reassignments available at <https://www.opm.gov/policy-data-oversight/workforce-restructuring/Summary-of-Reassignment/>.

² See OPM's Summary of Reassignments available at <https://www.opm.gov/policy-data-oversight/workforce-restructuring/Summary-of-Reassignment/>.

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email them to mwinston@osc.gov. If we do not *receive* your comments by the end of the thirteen-day period, we will close your file. We will then send you a letter terminating our inquiry and advising you of any additional rights you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Malvina Winston", with a long, sweeping horizontal stroke extending to the right.

Malvina Winston

Attorney

Complaints Examining Unit